Supreme Court, U.S.
FILED

081565 MAR 27 2009

OFFICE OF THE CLERK

Nos. 07-35361, 07-353621, 07-35785, 07-35966

IN THE

Supreme Court of the United States

IVAN KRIGER, ANDREY SAMOLOVOV, JOSEPH ESPOSITO

Petitioners

v.

BOWEN PROPERTY MANAGEMENT, JOHN BALLAS

Respondents

On Petition For Writ Of Certiorari
To The Ninth Circuit Court Of Appeals

APPENDIX

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APPENDIX A

FILED
DEC. 29 2008
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH ESPOSITO; et al.,	No. 07-35361
	D.C. No.
Plaintiff – Appelless,	CV-03-00250-EFS
v.	
	ORDER
BOWEN PROPERTY MGMT; et al.,	
Defendants – Appellatns,	
and	
KERREY LEMONS,	
Defendant.	

JOSEPH ESPOSITO; et al.,	No. 07-35621
	D.C. No.
Plaintiff – Appelless,	CV-03-00250-EFS
v.	
BOWEN PROPERTY MGMT; et al.,	

Defendants – Appellatns,	
and	
KERREY LEMONS,	
Defendant.	

JOSEPH ESPOSITO; et al.,	No. 07-35966
	D.C. No.
Plaintiff – Appelless,	CV-03-00250-EFS
v.	
BOWEN PROPERTY MGMT; et al.,	
Defendants – Appellatns,	
and	
KERREY LEMONS,	
Defendant.	

Before: RYMER and KLEINFELD, Circuit Judges, and HURLEY** District Judge.

The panel has voted unanimously to deny the petition for rehearing. Judges Rymer and Kleinfeld

have boted to deny the petition for rehearing en banc, and Judge Hurley has recommended the same.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a voted on the petition for rehearing en banc. Fed.R.App.P. 35(b).

The petition for rehearing and the petition for rehearing en banc are DENIED.

** The Honorable Denis R. Hurley, Senior United States District Judge for the Eastern District of New York, sitting by designation.

FILED
DEC. 29 2008
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH ESPOSITO; et al.,	No. 07-35361
	D.C. No.
Plaintiff – Appelless,	CV-03-00250-EFS
v.	
	MEMORAN-
BOWEN PROPERTY MGMT; et al.,	DUM
Defendants – Appellatns,	
and	
KERREY LEMONS,	
Defendant.	

JOSEPH ESPOSITO; et al.,	No. 07-35621
	D.C. No.
Plaintiff – Appelless,	CV-03-00250-EFS
v.	
BOWEN PROPERTY MGMT; et al.,	

Defendants – Appellatns,	
and	
KERREY LEMONS,	
Defendant.	

JOSEPH ESPOSITO; et al.,	No. 07-35966
	D.C. No.
Plaintiff – Appelless,	CV-03-00250-EFS
v.	
BOWEN PROPERTY MGMT; et al.,	
Defendants – Appellatns,	
and	
KERREY LEMONS,	
Defendant.	

Appela from the United States District Court

For the Easter District of Washington

Edward F. Shea, District Judge, Presiding

Argued and Submitted October 23, 2008

Seattle, Washignton

Before: RYMER and KLEINFELD, Circuit Judges, and HURLEY** District Judge.

It follows from Arnold v. International Business Machines, 637 F.2d 1350 (9th Cir. 1981), that the private actors in this case cannot be liable because there is no evidence that Bowen or Ballas exercised "control or power" over the police and prosecutor, or directed their activities. Id. at 1356. Kriger and Samolovov both testified that their damages resulted from the criminal case against them. Their testimony did not establish any damages from protected activity independent of the criminal prosecution. Accordingly, Bowen and Ballas were entitled to judgment as a matter of law. Kriger and Samolovov's activities (which we assume for the sake of this analysis were protected) did not

proximately cause the adverse action, arrest and prosecution, which resulted in their damages.

We therefore reverse and remand with instructions to enter judgment in favor of Bowen and Ballas. We also direct that the attorney's fees awards in favor of Kriger and Samolovov be vacated as they no longer are prevailing parties.

REVERSED and REMANDED.

** The Honorable Denis R. Hurley, Senior United States District Judge for the Eastern District of New York, sitting by designation.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATALYA PRACH, IVAN KRIGER,
ANDREY SAMOLOVOV,
ANATOLIY TSIRIBKO and
JOSEPH ESPOSITO,
Plaintiff-Intervenors,
vs.

BOWEN PROPERTY MANAGEMENT,
JOHN BALLAS,
and
KERREY LEMONS,
Defendants.

CASE NO. CV-03-250-EFS

JUDGMENT IN A CIVIL CASE

Jury Verdict: This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED that Judgment is entered in favor of Plaintiffs pursuant to

a Jury Verdict returned on March 23, 2007 as follows:

the plaintiff NATALYA PRACH recover of the defendant KERREY LEMONS as agent of Bowen Property Management, the sum of $3001.00, and her costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961; that she recover of the defendant JOHN BALLAS as agent of Bowen Property Management, the sum of $2001.00, and her costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961; and that she recover of the defendant BOWEN PROPERTY MANAGEMENT the sum of $24,998.00, and her costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961.

The plaintiff IVAN KRIGER/JOSEPH ESPOSITO recover of the defendant KERREY LEMONS as agent of Bowen Property Management, the sum of $1.00 and his costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961; that he recover of the defendant JOHN BALLAS as agent of Bowen Property Management, the sum of $1.00, and his costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961; and that he recover of the defendant BOWEN PROPERTY MANAGEMENT the sum of $79,998.00, and his costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C § 1961.

The plaintiff ANDREY SAMOLOVOV recover of the defendant KERREY LEMONS as agent of

Bowen Property Management, the sum of $1.00, and his costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961; that he recover of the defendant JOHN BALLAS as agent of Bowen Property Management, the sum of $1.00, and his costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961; and that he recover of the defendant BOWEN PROPERTY MANAGEMENT the sum of $4,998.00, and his costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961.

The plaintiff ANATOLIY TSIRIBKO recover of the defendant KERREY LEMONS as agent of Bowen Property Management, the sum of $1.00, and his costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961; that he recover of

the defendant JOHN BALLAS as agent of Bowen Property Management, the sum of $1.00, and his costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961; and that he recover of the defendant BOWEN PROPERTY MANAGEMENT the sum of $4,998.00, and his costs of action, both with interest at the rate of 4.93% as provided by 28 U.S.C.§ 1961.

March 28, 2007
Date
JAMES R. LARSEN
Clerk
s/Debbie Brasel
(By) Deputy Clerk
Debbie Brasel

APPENDIX C

Filed in the
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
MAR 23 2007
JAMES R. LARSEN, CLERK
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATALYA PRACH, IVAN KRIGER, ANDREY SAMOLOVOV, ANATOLIY TSIRIBKO AND JOSEPH ESPOSITO, as TRUSTEE FOR IVAN KRIGER,
Plaintiffs,

vs.

BOWEN PROPERTY MANAGEMENT, L.P., JOHN BALLAS, and KERRY LEMONS,
Defendants.

NO. CV-03-0250-EFS

VERDICT FORM

We, the jury, answer the questions submitted by the

Court as follows:

Question 1: has Plaintiff Natalya Prach proved that she was coerced, intimidated, threatened, or interfered with on account of that plaintiff having aided or encouraged any other person in the exercise or enjoyment of their housing rights under Section 3604

a. by Defendant Kerrey Lemons? Yes

b. by Defendant John Ballas? Yes

c. by Defendant Bowen Property Management? Yes

If you answered "No" to each defendant then sign and date the Verdict Form. If you answered "Yes" to any defendant, answer the remaining questions only with respect to those defendants to which you answered "Yes" in Question 1.

ECONOMIC DAMAGES

Question 2: What amount of damages, if any, is necessary to compensate Plaintiff Natalya Prach for the value of wages, earnings, employment, other business opportunities, or other economic damages up to the present and in the future, that she lost as a result of

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? __$1____

a(2). Defendant Kerrey Lemons; for her actions not as agent of Bowen Property Management? __$0___

b. Defendant John Ballas' actions? ___$1___

c. Defendant Bowen Property Management's actions? ___$4,998.00_____

NON-ECONOMIC DAMAGES

Question 3: What amount of damages, if any, is necessary to compensate Plaintiff Natalya Prach for mental and emotional pain and suffering experienced and which with reasonable probability will be experienced n the future as a result of

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? __$3,000.00_

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? __$0___

b. Defendant John Ballas' actions? __$2,000.00___

c. Dcfendant Bowen Property Management's actions? ____$20,000.00____

If, but only if, you answered "Yes" to Question 1(a) or (b) or (c), but did not award any damages against that defendant in Questions 2 and 3, answer

Question 4 as to that defendant. If you awarded any damages against a defendant in Questions 2 or 3, and that defendant is Kerrey Lemons and/or Bowen Property Management, proceed directly to Question 5.

Question 4; Please assess nominal damages to be paid Plaintiff Natalya Prach in accordance with the provisions of Instruction Number 19.

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? _____

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? _____

b. Defendant John Ballas? _____

c. Defendant Bowen Property Management? _____

Question 5a: Do you find that Kerrey Lemons' conduct was malicious, oppressive, or in reckless disregard of Plaintiff Natalya Prach's rights? NO

Question 5b: Do you find that Bowen Property Managements' conduct was malicious, oppressive, or in reckless disregard of Plaintiff Natalya Prach's rights? NO

Question 6: If you answered "Yes" to Question 5a or 5b, please assess punitive damages to be paid to Natalya Prach by that defendant:

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? _____

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? _____

b. Defendant Bowen Property Management? _____

DATE: 3-23-07 PRESIDING JUROR__

Filed in the
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
MAR 23 2007
JAMES R. LARSEN, CLERK
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATALYA PRACH, IVAN KRIGER, ANDREY SAMOLOVOV, ANATOLIY TSIRIBKO AND JOSEPH ESPOSITO, as TRUSTEE FOR IVAN KRIGER,
Plaintiffs,

vs.

BOWEN PROPERTY MANAGEMENT, L.P., JOHN BALLAS, and KERRY LEMONS,
Defendants.

NO. CV-03-0250-EFS

VERDICT FORM

We, the jury, answer the questions submitted by the Court as follows:

Question 1: has Plaintiff Ivan Kriger/Joseph Esposito proved that he was coerced, intimidated, threatened, or interfered with on account of that plaintiff having aided or encouraged any other person in the exercise or enjoyment of their housing rights under Section 3604

d. by Defendant Kerrey Lemons? Yes

e. by Defendant John Ballas? Yes

f. by Defendant Bowen Property Management? Yes

If you answered "No" to each defendant then sign and date the Verdict Form. If you answered "Yes" to any defendant, answer the remaining questions only with respect to those defendants to which you answered "Yes" in Question 1.

ECONOMIC DAMAGES

Question 2: What amount of damages, if any, is necessary to compensate Plaintiff Ivan Kriger/Joseph Esposito for the value of wages, earnings, employment, other business opportunities, or other economic damages up to the present and in the future, that he lost as a result of

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? __$1____

a(2). Defendant Kerrey Lemons; for her actions not as agent of Bowen Property Management? __$0___

b. Defendant John Ballas' actions? ___$1___

c. Defendant Bowen Property Management's actions? ___$79,998.00_____

NON-ECONOMIC DAMAGES

Question 3: What amount of damages, if any, is necessary to compensate Plaintiff Ivan Kriger/Joseph Esposito for mental and emotional pain and suffering experienced and which with reasonable probability will be experienced in the future as a result of

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? __$0_

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? __$0___

b. Defendant John Ballas' actions? __$0___

c. Defendant Bowen Property Management's actions? ____$0____

If, but only if, you answered "Yes" to Question 1(a) or (b) or (c), but did not award any damages against that defendant in Questions 2 and 3, answer Question 4 as to that defendant. If you awarded any

damages against a defendant in Questions 2 or 3, and that defendant is Kerrey Lemons and/or Bowen Property Management, proceed directly to Question 5.

Question 4: Please assess nominal damages to be paid Plaintiff Ivan Kriger/Joseph Esposito in accordance with the provisions of Instruction Number 19.

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? _____

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? _____

b. Defendant John Ballas? _____

c. Defendant Bowen Property Management? _____

Question 5a: Do you find that Kerrey Lemons' conduct was malicious, oppressive, or in reckless disregard of Plaintiff Ivan Kriger's/Joseph Esposito's rights? NO

Question 5b: Do you find that Bowen Property Managements' conduct was malicious, oppressive, or in reckless disregard of Plaintiff Ivan Kriger's/Joseph Esposito's rights? NO

Question 6: If you answered "Yes" to Question 5a or 5b, please assess punitive damages to be paid to Ivan Kriger/Joseph Esposito by that defendant:

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? _____

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? _____

b. Defendant Bowen Property Management? _____

DATE: 3-23-07 PRESIDING JUROR__

Filed in the
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
MAR 23 2007
JAMES R. LARSEN, CLERK
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATALYA PRACH, IVAN KRIGER, ANDREY SAMOLOVOV, ANATOLIY TSIRIBKO AND JOSEPH ESPOSITO, as TRUSTEE FOR IVAN KRIGER,
Plaintiffs,

vs.

BOWEN PROPERTY MANAGEMENT, L.P., JOHN BALLAS, and KERRY LEMONS,
Defendants.

NO. CV-03-0250-EFS

VERDICT FORM

We, the jury, answer the questions submitted by the

Court as follows

Question 1: has Plaintiff Andrey Samolovov proved that he was coerced, intimidated, threatened, or interfered with on account of that plaintiff having aided or encouraged any other person in the exercise or enjoyment of their housing rights under Section 3604

g. by Defendant Kerrey Lemons? Yes

h. by Defendant John Ballas? Yes

i. by Defendant Bowen Property Management? Yes

If you answered "No" to each defendant then sign and date the Verdict Form. If you answered "Yes" to any defendant, answer the remaining questions only with respect to those defendants to which you answered "Yes" in Question 1.

ECONOMIC DAMAGES

Question 2: What amount of damages, if any, is necessary to compensate Plaintiff Andrey Samolovov for the value of wages, earnings, employment, other business opportunities, or other economic damages up to the present and in the future, that he lost as a result of

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? __$1____

a(2). Defendant Kerrey Lemons; for her actions not as agent of Bowen Property Management? __$0___

b. Defendant John Ballas' actions? ___$1___

c. Defendant Bowen Property Management's actions? ___$4,998.00_____

NON-ECONOMIC DAMAGES

Question 3: What amount of damages, if any, is necessary to compensate Plaintiff Andrey Samolovov for mental and emotional pain and suffering experienced and which with reasonable probability will be experienced in the future as a result of

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? __$0_

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? __$0___

b. Defendant John Ballas' actions? __$0___

c. Defendant Bowen Property Management's actions? ____$0____

If, but only if, you answered "Yes" to Question 1(a) or (b) or (c), but did not award any damages against that defendant in Questions 2 and 3, answer

Question 4 as to that defendant. If you awarded any damages against a defendant in Questions 2 or 3, and that defendant is Kerrey Lemons and/or Bowen Property Management, proceed directly to Question 5.

Question 4; Please assess nominal damages to be paid Plaintiff Andrey Samolovov in accordance with the provisions of Instruction Number 19.

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? _____

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? _____

b. Defendant John Ballas? _____

c. Defendant Bowen Property Management? _____

Question 5a: Do you find that Kerrey Lemons' conduct was malicious, oppressive, or in reckless disregard of Plaintiff Andrey Samolovov's rights? NO

Question 5b: Do you find that Bowen Property Managements' conduct was malicious, oppressive, or in reckless disregard of Plaintiff Andrey Samolovov's rights? NO

Question 6: If you answered "Yes" to Question 5a or 5b, please assess punitive damages to be paid to Andrey Samolovov by that defendant:

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? _____

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? _____

b. Defendant Bowen Property Management? _____

DATE: 3-23-07 PRESIDING JUROR__

Filed in the
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
MAR 23 2007
JAMES R. LARSEN, CLERK
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATALYA PRACH, IVAN KRIGER, ANDREY SAMOLOVOV, ANATOLIY TSIRIBKO AND JOSEPH ESPOSITO, as TRUSTEE FOR IVAN KRIGER,
Plaintiffs,

vs.

BOWEN PROPERTY MANAGEMENT, L.P., JOHN BALLAS, and KERRY LEMONS,
Defendants.

NO. CV-03-0250-EFS

VERDICT FORM

We, the jury, answer the questions submitted by the

Court as follows:

Question 1: has Plaintiff Anatoliy Tsiribko proved that he was coerced, intimidated, threatened, or interfered with on account of that plaintiff having aided or encouraged any other person in the exercise or enjoyment of their housing rights under Section 3604

j. by Defendant Kerrey Lemons? Yes

k. by Defendant John Ballas? Yes

l. by Defendant Bowen Property Management? Yes

If you answered "No" to each defendant then sign and date the Verdict Form. If you answered "Yes" to any defendant, answer the remaining questions only with respect to those defendants to which you answered "Yes" in Question 1.

ECONOMIC DAMAGES

Question 2: What amount of damages, if any, is necessary to compensate Plaintiff Anatoliy Tsiribko for the value of wages, earnings, employment, other business opportunities, or other economic damages up to the present and in the future, that he lost as a result of

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? __$1____

a(2). Defendant Kerrey Lemons; for her actions not as agent of Bowen Property Management? __$0___

b. Defendant John Ballas' actions? ___$1___

c. Defendant Bowen Property Management's actions? ___$4,998.00_____

NON-ECONOMIC DAMAGES

Question 3: What amount of damages, if any, is necessary to compensate Plaintiff Anatoliy Tsiribko for mental and emotional pain and suffering experienced and which with reasonable probability will be experienced in the future as a result of

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? __$0_

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? _$0___

b. Defendant John Ballas' actions? __$0___

c. Defendant Bowen Property Management's actions? ____$0____

If, but only if, you answered "Yes" to Question 1(a) or (b) or (c), but did not award any damages against that defendant in Questions 2 and 3, answer

Question 4 as to that defendant. If you awarded any damages against a defendant in Questions 2 or 3, and that defendant is Kerrey Lemons and/or Bowen Property Management, proceed directly to Question 5.

Question 4; Please assess nominal damages to be paid Plaintiff Anatoliy Tsiribko in accordance with the provisions of Instruction Number 19.

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? _____

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? _____

b. Defendant John Ballas? _____

c. Defendant Bowen Property Management? _____

Question 5a: Do you find that Kerrey Lemons' conduct was malicious, oppressive, or in reckless disregard of Plaintiff Anatoliy Tsiribko's rights? NO

Question 5b: Do you find that Bowen Property Managements' conduct was malicious, oppressive, or in reckless disregard of Plaintiff Anatoliy Tsiribko's rights? NO

Question 6: If you answered "Yes" to Question 5a or 5b, please assess punitive damages to be paid to Anatoliy Tsiribko by that defendant:

a(1). Defendant Kerrey Lemons' for her actions as an agent of Bowen Property Management? _____

a(2). Defendant Kerrey Lemons' for her actions not as agent of Bowen Property Management? _____

b. Defendant Bowen Property Management? _____

DATE: 3-23-07 PRESIDING JUROR__

APPENDIX D

Filed in the
U.S. District Court
Eastern District of Washington
AUG 30 2004
JAMES R. LARSEN, CLERK
RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATALYA PRACH, IVAN KRIGER, ANDREY SAMOLOVOV, ANATOLIY TSIRIBKO AND JOSEPH ESPOSITO, as TRUSTEE FOR IVAN KRIGER,
Plaintiffs,

vs.

BOWEN PROPERTY MANAGEMENT, L.P., JOHN BALLAS, and KERRY LEMONS,
Defendants.

NO. CV-03-0250-EFS

ORDER GRANTING IN PART PLAINTIFFS' MOTIONS FOR ATTORNEYS FEES AND APPORTIONING INTERPRETER COSTS

On June 12, 2007, a telephonic hearing was held in the above captioned matter. Plaintiffs Natalya Prach

and Anatoliy Tsiribko were represented by Jeffry Finer and Leigh Talley. Plaintiffs Andrey Samolovov and Joseph Esposito, as trustee for Ivan Kriger, were represented by University Legal Assistance (hereinafter "ULA"). Eric M. Steven and Aaron M. Naccarato appeared on behalf of Defendants Bowen Property Management, John Ballas, and Kerry Lemons.

Before the Court were Plaintiffs' Motions for Attorneys Fees (Ct. Recs. 545, 546, 515, and 495) and Christopher M. Grimes' motion to Strike Declaration of Ivan Kriger (Ct. Rec. 562). On behalf of Plaintiffs Prach and Tsiribko, Jeffry K. Finer requests $78,390.00 in fees (Ct. Rec. 545). On behalf of the same Plaintiffs, Leigh N. Talley requests $17,300.00 in fees (Ct. Rec. 546-3). ULA seeks $75,472.25 in fees on behalf of Plaintiff-Intervenors Kriger, Samolovov,

and Esposito (Ct. Rec. 586 at 2). Christopher M. Grimes, former counsel for Plaintiffs Tsiribko, Samolovov, Kriger, and Prach, seeks $42,000.00 in fees and $1,473.28 in costs for a total of $43,473.28 (Ct. Rec. 496-3).

Defendants oppose all of the motions, and specifically in response to Mr. Grimes' motion, they argue he has no standing to recover attorneys fees on his own behalf because he is not a "prevailing party."

In connection with the other motions, Defendants argue the rates of ULA are unreasonable, that Mr. Talley's "block billing" at $1,400.00 a day for trial time is unreasonable, and that Mr. Finer should not be awarded fees for time spent on a criminal matter for Ms. Prach. Presumably in an effort to shield the individual Defendants from financial harm, Defendants argue Ms. Lemons and Mr. Ballas should

not be liable for attorneys' fees because they were only liable to Plaintiffs Tsiribko, Esposito and Kriger for $1.00 in economic damages.

After hearing oral argument and considering the submitted material and relevant authority, the Court was fully informed. This Order serves to memorialize and supplement the Court's oral ruling granting in part Plaintiffs' Motions for Attorneys Fees, while holding in abeyance Mr. Grimes' motions. In addition, the Court apportions the trial interpreter costs.

While a *de minimis* victory is not a bar to the determination of a plaintiff's prevailing party status, it is part of the reasonable fee analysis under *Farrar*. Accordingly, the Court will analyze Defendants' "de-minimis" arguments below.

A. Attorneys Fees

Plaintiffs prevailed in an action under the Fair Housing Act (hereinafter "FHA") and therefore seek attorneys' fees from Defendants under Federal Rule of Civil Procedure 54(d) and 42 U.S.C. § 3613(c)(2). Rule 54(d) states:

> Except when express provision therefore is made either in a statute of the United States or in these rules, costs shall be allowed *as of course to the prevailing party* unless the court otherwise directs, but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court. (emphasis added).

Under 42 U.S.C. § 3613(c)(2), the court, in its discretion, may allow the prevailing party in an FHA action a reasonable attorneys fee and costs. To become a prevailing party under *Farrar v. Hobby,* 506 U.S. 103 (1992), a plaintiff must obtain actual relief on the merits of the claim and such relief must affect the behavior of the defendant towards the plaintiff. Plaintiffs in this case qualify as "prevailing parties" because they received actual relief on the merits and obtained a monetary judgment which affects the behavior of the Defendants towards the Plaintiff (*i.e.*, Defendant must pay Plaintiff).

The starting point to determine reasonable attorney fees for the prevailing party in an FHA suit is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)

(setting standard for fee award under 42 U.S.C. § 1988); *see also Thorne v. City of El Segundo,* 802 F.2d 1131, 1141 n.10 (9th Cir. 1986) (finding *Hensley* applicable "in all cases in which Congress has authorized an award of fees to a 'prevailing party.'" (citations omitted). After the product of reasonable hours times reasonable rate is determined (the lodestar figure), the court next may "adjust the fee upward or downward, including the important factor of the 'results obtained.'" *Hensley,* 461 U.S. 424 at 434.

In making any adjustments, two questions must be asked and answered. First, "did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded?" *Id.* If so, then work on the unsuccessful claim which cannot be attributed to the ultimate result achieved should not be part of the

reasonable attorney fees. *Id.* Second, "did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?" *Id.* A court may award the entire fee requested, limited to cases with "excellent results," if it would be unjust to reduce the fee "simply because the plaintiff failed to prevail on every contention raised." *Id.* at 435. On the other hand, if success is partial or limited, awarding fees for the entire litigation is likely excessive. *Id.* at 436. For partial or limited success, the "court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." *Id.* at 436-437. Where success is minor or technical, the reasonable attorney fees may be extremely limited. *Id.* at 440 n.14. 2 *Johnson v. Georgia Highway Express, Inc.*,

448 F.2d 714 (5th Cir. 1974) (adopted by the Ninth Circuit in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)). The Court recognizes that consideration of some of the *Johnson* factors is forbidden or cast into doubt. *See, e.g. Davis v. City and County of San Francisco*, 976 F.2d 1536, 1546 (9th Cir. 1992) (citations omitted) (consideration of contingent fee not appropriate and doubtful that "desirability" of the case is appropriate for consideration). Further, some of the *Johnson* factors, such as time and labor, novelty or difficulty, necessary skill, preclusion of other employment, customary fee, and results obtained, are subsumed by the *Hensley* analysis. *See Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 566 (1986) ("the lodestar figure includes most, if not all, of the relevant factors constituting a 'reasonable'

attorney's fee,") but see *McGinnis v. Kentucky Fried Chicken*, 51 F.3d 805, 809 (9th Cir. 1995) (suggesting that *Kerr* remains good law, although rote recitation of factors is unnecessary).

In determining whether the hours charged are reasonable, the court should consider the *Johnson2* factors and whether the hours are "excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. 424. If counsel's time records are insufficient to distinguish the time spent on particular claims, then the fee may be reduced. Id. at 437 n.12.

In deciding whether the charged rate is reasonable, the court is to rely upon affidavits submitted by the parties and by the judges' own experience regarding what is a reasonable rate in the district. *Blum v. Stenson*, 465 U.S. 866 (1984). The quality of counsel and novelty and complexity of the case should

ordinarily be reflected in the lodestar rate, not in an upward adjustment of the fee, which poses the risk of double counting. *See Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 566 (1986). Non-monetary gain may also be taken into account. *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, 484 F.3d 162 (2nd Cir. 2007)(acknowledging a reasonable, paying client might consider whether an attorney is willing to offer services at a lower rate or even pro bono to promote the attorney's reputation or other societal goals). Finally, the overall purpose of awarding costs to the prevailing party is to encourage the individual to act as a "private attorney general."

Attorneys may "recover more than the benefit to their client would make reasonable, because (such

actions) also confer benefits on others throughout society..." *McGinnis v. Kentucky Fried Chicken,* 51 F.3d 805, 809 (9th Cir. 1995) at 810. "But the benefit is not infinite. What the lawyers do for their actual client is an important measure of 'extent of success.'" *Id.* Thus, the degree of success is relevant to a fee award, but strict proportionality between relief obtained and attorney fees is not required. *Riverside v. Riviera,* 477 U.S. 561, 574 (1986).

1) Plaintiff-Intervenors Kriger, Samolovov, and Esposito's Motion for Attorneys Fees (ULA)

ULA represented Plaintiff-Intervenors Kriger, Samolovov, and Esposito. Their fees are calculated so that one legal intern and one supervising attorney collectively are billed at the rate of one experienced attorney (Ct. Rec. 517 at 3). Two interns worked on the case at trial. For pre-trial work, the supervising

attorney billed at $100/hour while the intern billed at $75/hour, totaling $175/hr. For trial work, the supervising attorneys billed at $225/hour while the interns billed at $75/hour, totaling $300/hr each for trial work ($600/hr total for the two attorney/intern teams).

After the hearing, ULA reconsidered the reasonableness of the amount requested and retracted its bill for fees for one of the supervising attorneys at trial, reducing the total amount of fees to $75,472.25 (Ct. Rec. 586 at 2). ULA also reduced its copying charges to a rate of $0.09 (instead of $0.50), which reduces its total copy charge request to $154.08.

Defendants primarily seek denial of the Plaintiffs' Motion for Attorneys Fees on the grounds that such fees are unreasonable under *Farrar v. Hobby*, 506

U.S. 103, 115 (1992), because Plaintiffs Kriger, Samolovov, and Tsiribko were merely awarded nominal damages ($1.00) (Ct. Rec. 482, 484 and 486). Under *Hensley*, where one party obtains "relief of significant import" rather than nominal relief, an award of reasonable fees is proper. The Court finds the $1.00 award was not nominal in the same sense as the damages were in *Farrar*. Defendants Lemons and Ballas were ruled against as "agent(s) of Bowen Property Management" (Ct. Rec 448 at 1) and were integrally involved in the
events which led to the instant litigation. There were no nominal damages awarded on any of the jury verdict forms (*see* Ct. Rec. 480 at 4, Ct. Rec. 482 at 4, Ct. Rec. 484 at 4, and Ct. Rec. 486 at 4; *see also* Ct. Rec. 471 at 24). Furthermore, there is a note from the jury inquiring whether an amount comes directly

out of the individual's pocket (Ct. Rec. 475), indicating the jury found actual, compensable damages but chose to place the burden of payment on Bowen Property Management. Plaintiffs Kriger, Samolovov, and Tsiribko's victory was neither technical nor *de minimis*; therefore, it is not unjust to award reasonable attorneys fees against all Defendants. *See Corder v. Gates*, 947 F.2d 374, 376 (9th Cir. 1991) (citing *Sable Comm. Inc v. Pacific,* 890 F.2d 184 at 194 (9th Cir. 1989)). The Court finds the jury award was an effort to spare the individual Defendants financial hardship while still deciding that Plaintiffs were entitled to relief on the merit of their claims; thus the attorney fees shall be shared equally by all Defendants.

Because the Court finds an award of attorneys fees is just, the Court conducted a *Hensley* analysis to

determine what fees were reasonable. After reviewing the hours submitted by ULA, the Court finds the supervising pre-trial attorneys' hours (148.8) are reasonable, however the following entries have been reduced:

Requested Awarded

legal intern pre-trial hours: 507.5 300

supervising attorney trial hours: 156.8 100

legal intern trial hours: 152.5 118

Accordingly, the Court awards ULA $68,730.00 in attorneys fees to be paid equally by all Defendants. Plaintiff-Intervenors' Motion for Attorneys Fees is granted in part.

(2) Plaintiffs Prach and Tsiribko's Motion for Attorneys Fees (Leigh N. Talley)

Mr. Talley seeks $17,300.00 in fees. Defendants object to Mr. Talley's flat rate of $1,400.00 per trial

day instead of specifying an hourly rate, which is $150 per hour for all other work (Ct. Rec. 546-3). With respect to both motions brought by Plaintiffs Prach and Tsiribko, Defendants object to the reasonableness of any fee on the grounds that these plaintiffs were only awarded by the jury 30% of what they sought, thereby diminishing the "results obtained" factor of the reasonableness analysis. While the amount awarded was smaller than what Plaintiffs were seeking, it was still a substantial amount (over $80,000.00). As prevailing parties, Plaintiffs are entitled to reasonable attorneys fees. The Court finds a reasonable amount is $1,350.00 per day (or approximately $150 per hour) for Mr. Talley's trial time. Furthermore, the Court awards Mr. Talley half the amount he requested on March 7 and February 28, 2001 respectively. Accordingly, the

Court awards Plaintiffs Prach and Tsiribko $16,525.00 for attorneys fees of Leigh Talley to be paid equally by all Defendants; the motion is granted in part.

(3) Plaintiffs Prach and Tsiribko's Motion for Attorneys Fees (Jeffry K. Finer)

Jeffry K. Finer seeks $78,390.00 in fees. Defendants object to portions of Mr. Finer's bill, which includes time spent on a criminal matter for Ms. Prach. The number of hours spent on the criminal matter is 10.3, which amounts to $2,060.00 at the attorney's $200 per hour rate. The Court finds the inclusion of time spent on the criminal matter is unreasonable and should be subtracted. The Court awards the adjusted amount, which is $76,330.00 to be paid by all Defendants equally.

(4) Plaintiffs Kriger, Samolovov, and Tsiribko's Motion for Attorneys Fees (Christopher M. Grimes) and Motion to Strike Declaration

As the Court explained at the hearing, the Court finds an evidentiary hearing is necessary to resolve these motions. Accordingly, these motions will be held in abeyance until the evidentiary hearing set for August 22, 2007, at 10:00 a.m. in Spokane. The parties are directed to the Court's June 15, 2007, Order (Ct. Rec. 587).

B. Interpreter Costs

On November 15, 2005, the Court entered an Order finding that appointment of an interpreter for trial was appropriate and noting that such expenses were to be apportioned under 18 U.S.C. § 1828(c). (Ct. Rec. 265.) The interpreter fees at trial totaled $6,390.00; however, the parties are also responsible for the

interpreter cancellation fees of $1,420. Therefore, the total interpreter costs to be apportioned is $7,810.

Accordingly, **IT IS ORDERED:**

(1) Plaintiffs Prach and Tsiribko's Motion for Attorneys Fees (Ct. Rec. 545) is GRANTED IN PART. Defendants shall pay Plaintiffs Prach and Tsiribko $76,330.00 for Mr. Finer plus costs.

(2) Plaintiffs Prach and Tsiribko's Motion for Attorneys Fees (Ct. Rec. 546) is GRANTED IN PART. Defendants shall pay Plaintiffs Prach and Tsiribko $16,525.00 for Mr. Talley plus costs.

(3) Plaintiff-Intervenors Kriger, Samolovov, and Esposito's Motion for Attorneys Fees (Ct. Rec. 515) is GRANTED IN PART.

Defendants shall pay Plaintiff-Intervenors Kriger, Samolovov, and Esposito $68,730.00 for ULA plus costs.

(4) Christopher M. Grimes' Motion to Strike Declaration is HELD IN ABEYANCE until August 22, 2007, at 10 a.m. in Spokane.

(5) The cost of the interpreters ($7,810) is proportioned between the parties.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and furnish copies to counsel and the Financial Administrator.

DATED this 3rd day of July 2007.

S/ Edward F. Shea
EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE